



UNITED STATES PATENT AND TRADEMARK OFFICE

BL

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/811,345

03/26/2004

Russell Bonaventura

LEAP:135US

1573

7590

08/14/2006

C. Paul Maliszewski, P.E.
Simpson & Simpson, PLLC
5555 Main Street
Williamsville, NY 14221-5406

EXAMINER

PRITCHETT, JOSHUA L

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/811,345

Applicant(s)

BONAVENTURA ET AL.

Examiner 571-272-2318
Joshua L. Pritchett

Art Unit
2872

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 2-34, 36-52.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.


DREW A. DUNN
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues the examiner's interpretation of the portion of Fig. 1 of Chin showing light source accessible from the exterior of the apparatus is a cut away portion of the front surface in incorrect. Initially, the applicant appears to think the examiner intended to call the entire image of Fig. 1 of Chin is a cut away. The examiner intended to convey only that the portion of Fig. 1 showing the light source is a cut away. The examiner's interpretation is based on the relationship between Figs. 1 and 2 of Chin. In Fig. 1 the portion of the drawing that shows the light source is between the two elements 25 shown as concentric circles in the drawing. In Fig. 2, which is a top view of the same apparatus shown in Fig. 1, the wall between elements 25 is solid with no opening. Further the examiner's interpretation is based on the knowledge of one of ordinary skill in the art. If a light source were as accessible as applicant asserts the Chin light source to be, the light source would be subject to a large amount of contamination, including dust and oil from fingerprints. In a light source that creates heat to the point of requiring a heat sink to dissipate the heat energy, such contamination will create locations on the exterior surface of the light source which will not heat up evenly. The uneven heating results from the different thermal conductivity and heat capacity of the contaminants from the material for the exterior of the light source. The uneven heating can cause the light source to fracture and become useless as a result of the fracture. The Chin reference is directed to maintaining the integrity of the light source as evidenced by the very presence of the heat sink which is intended to prolong the useful life of the light source. As a result the examiner interprets the view of the light source shown in Fig. 1 as a cut away portion of Fig. 1 to show the location and orientation of the light source and heat sink within an enclosed chassis for the light source.

Applicant further argues the baffles of Chin do not ~~occlude~~ ^{occlude} light from emanation from the illumination source through the air inlet. Examiner previously stated the air inlet was element 9 shown in Fig. 1 of Messinger. Applicant has not traversed this statement. The three partitions shown in Fig. 1 are baffles as interpreted by the examiner. The first partition extends from the lower left corner of the power supply as shown in Fig. 1. The second partition is located between the two arrows indicating air flow that curve into the area of the light source. The third partition extends from the outer wall 20 in line with the other two partitions. The term baffle means to deflect or regulate flow. The curvature of the arrows and the location of the arrows (between the partitions) show that the partitions act to deflect or regulate flow of the air. Therefore the partitions are baffles. The partitions in conjunction with the passageway, as defined by the applicant, act to prevent light emanating from the source 1 through the air inlet 9. The location of the partitions and the passageway would act to prevent light from traveling around the partitions, turning a first corner, up the passageway, turning a second corner, further along the passageway and then turning again to exit through the air inlet.

Applicant further argues Messinger is not analogous art because Messinger is related to fiberoptic illumination not to a microscope. The thrust of the current invention is directed to a heat sink assembly. Intend the term microscope appears only in the preamble of the claim and even in the preamble includes no structural limitations to further define the microscope. Further the Messinger reference is used merely to teach modifications to the heat sink of Chin not to the lens structure or any other element of a microscope.